

REMARKS:

Claims 1-4 and 7-43 are presented for examination, with claims 1, 7, 29 and 32 having been amended hereby, new claims 37-43 having been added, and claims 5 and 6 having been cancelled, without prejudice or disclaimer.

To begin with, notice is respectfully taken of the allowance of claims 9-28 and 33-36.

Further, it is respectfully submitted that the rejection of claims 5 and 6 under 35 U.S.C. §112, second paragraph, has been rendered moot by the cancellation of these claims.

Further still, reconsideration is respectfully requested of the rejection of claims 1-8 and 29-32 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,827,286 ("Incavo et al.") in view of U.S. Patent No. 6,335,036 ("Nakajima.").

In this regard, it is respectfully submitted that applicants do not necessarily concur with the Examiner in the Examiner's analysis of the claims of the present application and the Incavo et al. and Nakajima disclosures.

For example, it is respectfully submitted that applicants do not concur with the Examiner regarding the alleged obviousness of the combination proposed by the Examiner. This is due at least in part to the fact that the present invention, as explicitly recited in each of the claims, relates to an internal fixation device. Likewise, the device of Incavo et al. is an internal device. In marked contrast, however, Nakajima appears to relate to a bone adjuster with an adjustment mechanism which protrudes out from the body. In this regard, *see*, e.g., col. 4, lines 30-36 of Nakajima, where it is stated:

On the other hand, an operation region 60 which is manipulated by an operator to operate the adjusting shaft 26 is formed at the rear end portion of the adjusting shaft 26. The operation region 60 is positioned outside of the patient's body to expand the bone. The shaft 26 is rotated by operating the operation region 60 so to increase or decrease the space between the first lift plate and the second lift plate. (emphasis added)

Thus, it is respectfully submitted that there would be no motivation for one skilled in the art to combine the disparate references as suggested by the Examiner.

Nevertheless, in order to expedite prosecution of the application, claim 1 has been amended hereby to more particularly point out the features of the invention directed to: (a) the

first surface of the slide (i.e., the surface of the slide having the ratchet teeth) comprising one of a posterior surface of the slide and an anterior surface of the slide when the device is implanted on a medial surface of a patient's tibia; (b) the distal plate comprising a second channel in one of a posterior portion of the distal plate and an anterior portion of the distal plate when the device is implanted on the medial surface of the patient's tibia; (c) the first surface of the slide comprising a posterior surface when the second channel of the distal plate is in the posterior portion of the distal plate and the first surface of the slide comprising an anterior surface when the second channel of the distal plate is in the anterior portion of the distal plate; and (d) the ratchet arm being disposed within the second channel for movement along a generally anterior-posterior plane when the device is implanted on the medial surface of the patient's tibia.

In other words, these features cooperate such that the ratchet arm moves essentially forward and backward during engagement with the teeth of the slide. Of note, this configuration may aid in maximizing patient comfort by minimizing or eliminating ratchet arm contact with the skin.

It is believed that these features, as claimed, are neither shown nor suggested by Incavo et al. or Nakajima (either alone or in combination).

More particularly, in marked contrast to the forward and backward movement of the ratchet arm recited in claim 1, Incavo et al. discloses lateral movement of the ratchet.

In fact, this is specifically discussed at page 3 of the specification of the present application, where it is indicated that:

Second, the device of the '286 patent [Incavo et al.] locates the ratchet mechanism on the medial side of the implant. Therefore, the ratchet arm is stacked on top of the plate member including the grooves, which is in turn stacked on top of the tibia. The device thus protrudes a significant distance from the bone, causing unsightly deformation of the overlying skin and irritation to the patient.

Referring now to independent claims 7, 29 and 32, it is noted that these claims have been amended in a manner similar to claim 1. That is, each of claims 7, 29 and 32 now explicitly recites that the ratchet arm is disposed for movement along a generally anterior-posterior plane when the device is implanted on the medial surface of the patient's tibia.

Further, it is noted that each of claims 2, 3, 4, 8, 30 and 31 depends, directly or indirectly,

from one of independent claims 1, 7, 29 and 32. Thus, it is respectfully submitted that each of these dependent claims is patentably distinct for at least the same reasons as the independent claim from which it depends.

Likewise, it is noted that each of new claims 37-43 depends, directly or indirectly, from one of independent claims 1, 7, 29 and 32. Thus, it is respectfully submitted that each of these dependent claims is also patentably distinct for at least the same reasons as the independent claim from which it depends.

Therefore, it is respectfully submitted that the rejection of claims 1-8 and 29-32 under 35 U.S.C. 103(a) as being unpatentable over Incavo et al. in view of Nakajima has been overcome.

Accordingly, it is respectfully submitted that each rejection raised by the Examiner in the September 16, 2003 Office Action has been rendered moot or overcome and that the above-identified application is now in condition for allowance.

Finally, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

More particularly, support for the amendments to claims 1, 7, 29 and 32 regarding the anterior/posterior positioning and the movement of the ratchet arm is found, for example, in claims 1, 5, 6, 7, 29, and 32, as filed; at page 12, second to last paragraph to page 13, first paragraph; Figs. 1 and 5A-5C; and throughout the specification.

Further, support for new claims 37, 39 and 42 regarding the bone engaging surface is found, for example, in claim 3, as filed; Fig. 2; and throughout the specification.

Further still, support for new claims 38, 40 and 43 regarding the through holes is found, for example, in claim 4, as filed; Figs. 1 and 2; and throughout the specification.

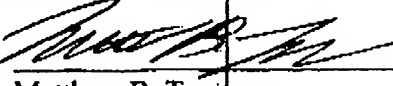
Further still, support for new claim 41 regarding the second axis is found, for example, in claim 2, as filed; Figs. 1 and 2; and throughout the specification.

Favorable reconsideration is earnestly solicited.

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